

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF CLINTON,  
Public Employer.

and

CLINTON POLICE BARGAINING UNIT,  
Petitioner,

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CASE NO. 4375

RELATIONS BOARD  
JUN 17 1991  
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PROPOSED DECISION AND ORDER

Diane Tvrdik, Administrative Law Judge. This proceeding arises from an amendment of unit petition filed with the Public Employment Relations Board [PERB or Board] by the Clinton Police Bargaining Unit [Union or CPBU] on January 25, 1991 pursuant to Iowa Code §20.13 (1989), and Rule 4.6(20) of the Public Employment Relations Board Rules. The original petition was incomplete as to excluded positions and an amended petition was filed on May 30, 1991, without objection by the City.

A hearing was held at the Clinton Law Enforcement Center on March 20, 1991. The Union was represented by G. Wylie Pillers and the City was represented by City Attorney, Bruce D. Johansen. Both parties had full opportunity to present evidence. The Union filed its post-hearing brief on April 15, 1991, and the City filed its post-hearing brief on April 16, 1991. Based upon the entire record in this case, I issue the following proposed Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

The City of Clinton is a public employer within the meaning of §20.3(1) of the Public Employment Relations Act [PERA or Act], Iowa Code Ch. §20 (1989), and the Union is an employee organization

within the meaning of §20.3(4) of the Act. At hearing, and without objection, I took official notice of all records and documents held by PERB regarding the employment relationship between the City and the CPBU.<sup>1</sup>

The original order of certification in PERB Case No. 560 was issued on May 17, 1976, after an evidentiary hearing, an election was conducted which resulted in the following bargaining unit:

INCLUDED: Sergeants, corporals and patrolmen.

EXCLUDED: Chief of police, captains, and all others excluded by Section 4 of the Act.

The Union seeks to amend the existing bargaining unit to include the following positions: Lieutenant; Departmental secretary; Secretary; Front desk clerk & receptionist; Record clerk; Part-time and full-time animal control wardens; and Public service officer. The City of Clinton [City] has resisted said amendment.

The City Police Department [Department] is composed of Police Chief Gene Bienke [Chief Bienke or Chief], three captains, three lieutenants, seven sergeants, six corporals and 23 patrol officers. The Department is divided into four sections: patrol; investigation; support services; and community services. All lieutenants are assigned as shift commanders in the patrol division with the minimum manning level of nine officers per shift. There are three shifts within a given 24-hour period. The A-shift

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<sup>1</sup>Iowa Code §17A.14(4) (1991). Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. . . .

commander's compliment consists of two sergeants, one corporal and six patrolmen; B-shift consists of one sergeant, two corporals and six patrolmen; C-shift consists of one sergeant, one corporal and seven patrolmen. The shifts rotate each 28 days.

There is a Patrol Operations Management Team [POMT] comprised of Chief Bienke and the three lieutenants. The POMT meetings are called by Bienke several times each month. Sergeants attend the POMT meetings by invitation only. Captains do not attend these meetings since the primary concern is patrol operations, of which captains have no part.

The Department is structured as a para-military unit and "everybody reports to the Chief". Bienke has been Police Chief for approximately five years and he has attempted to update the Department manual which has existed since 1976, but it is being accomplished on an "as we can" basis. The manual attempts to establish "clear guidelines" for both supervisory personnel and line officers as to how the job functions are to be carried out under normal circumstances, and it also sets the basic standards for "how-to-do" specific acts. Once the "clear guidelines" are set out in the manual, Chief Bienke testified that the manual becomes a functioning tool of the Department which is to be followed. If it is not followed, an officer involved could be disciplined. The Chief considers the manual constitutes police chief directives and should be considered by all officers as such.

All of the disputed job positions are located in or operate out of the law center, and these are filled with personnel who work

on a daily basis with Police personnel; all have jobs relating to the Department; all are City employees; and all are paid from the police payroll.

Sergeant David Speakman, CPBU spokesperson, testified that the CPBU believes that all petitioned-for employees can be fully represented by the Union. He further believes that a city-wide clerical unit would be a "better" unit for the secretarial employees if one existed, but there is no clerical bargaining unit in Clinton.

The disputed job classifications will be discussed by position.

#### **Secretarial Positions:**

The departmental secretary was also referred to as a supervising secretary.<sup>2</sup> Both the departmental and office secretaries work in the office area adjoining the Chief's office. The departmental secretary presently has no job description in the Department manual. Her primary duties are to: answer phones, file records/reports, type, transcribe police officer reports, make computer entries, prepare monthly bills, and assure that the office secretary and front desk clerk & receptionist perform their duties in a prompt and adequate manner. She works from 8:00 a.m. to 4:30 p.m., Monday through Friday. The pay range for departmental secretary is higher than that of the office secretary. Chief Bienne testified that he considered her as his personal secretary

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<sup>2</sup>For purposes of clarity, I shall use the term departmental secretary for the higher pay-range position and office secretary for the lower pay-range position.

and felt she was "akin to a confidential secretary". He further testified that she answered his phone, and made his travel arrangements and reservations. However, he also indicated that both secretaries were "cross-trained" and when the departmental secretary was gone, the office secretary did both jobs. Other than answering his phone and making reservations, Bienke knew of no other significant differences between the duties of the departmental secretary and the office secretary. The departmental secretary does not have the independent authority to reassign the hours of the office secretary, to change the pay of any employee, to suspend or terminate an employee. However, on one prior occasion, the departmental secretary sent a former secretary home from work because of suspected alcohol abuse on the job. The departmental secretary assisted Bienke in the preparation of the job description for the office secretary. Chief Bienke anticipates that this job description is to be considered a police chief directive, and the departmental secretary has the responsibility to ensure that the office secretary and front desk clerk & receptionist comply with those directives.

The duties of the office secretary are essentially indistinguishable from those designated for the departmental secretary although the pay range is lower, and her work hours are from 6:00 a.m. to 2:00 p.m., Monday through Friday. There was no testimony that she had any type of supervisory authority or performed any duties of a confidential nature, or that Bienke considers her his personal secretary. No evidence was presented

that either the departmental secretary or the office secretary had access to personnel records or that either of these secretaries either compiled or typed information which was used in the bargaining process.

**Front Desk Clerk & Receptionist:**

This position has a "job performance & self evaluation" sheet, but currently has no specific job description as contemplated by the Department manual. This position is filled by two part-time persons who work in the lobby of the law center. Each person works one-half day between the hours of 8:00 a.m. and 4:30 p.m. The employees in this position work with the public and police officers and are unquestionably under the authority of the police chief. The primary job duties are to: answer incoming phone calls; process computer entry of certain tickets/citations; and respond to "walk-in" business. The front desk clerk & receptionist sometimes covers for the communications operator when needed and can answer or respond to calls for either the city police department or the county sheriff's department, though the primary responsibility is to perform work for the City. One of the employees in this position also works for the City in the part-time position of desk clerk & receptionist at the fire department. Although she is a full-time City employee, she is a part-time police department employee.

**Record Clerk:**

There is presently no job description for this position. The record clerk position was formerly held by a sworn officer. The

general record keeping duties include: receive all police records which require keeping; file and maintain records in good order; retrieve accident reports for insurance requests; maintain police department payroll records and supply the same to the City clerk for payment. This position is located in the records room in the law center. The record clerk's first duty of the day is to receive the time sheets from the off-going shift. All further contact with police officers is at the request of a police officer.

**Animal Control Warden:**

There is currently one full-time and one part-time position. The full-time position is a forty hour/week position with the part-time at approximately 8-10 hours/week. Both employees work out of the law center and respond to citizen complaints (e.g. barking dogs, animals-at-large, etc.) and police officer information (e.g. pick up dead animals from roadways, at-large dogs). They receive direction from either the police officers or the dispatcher/receptionist. Each wears a uniform and drives a City vehicle.

**Public Service Officer [PSO]:**

This position has been in existence for approximately one year. There is a job description in the Department manual. The work hours are 10:00 a.m. to 6:00 p.m., five days/week. The PSO is non-sworn, but is uniformed and drives a City vehicle. The PSO reports to the shift commander for direction; however certain standard duties include: deliver mail between law center/city hall; shuttle cars to maintenance garage; assist with traffic

control; computer entry of statistical data; funeral escorts; vacation house-watch; and perform the duties of animal warden in their absence.

**Lieutenant:**

Police Chief Bienke and Lieutenant Michael Gertson [Gertson] testified as to the duties and responsibilities of the lieutenant. The position was newly created in January of 1991 and replaces the patrol captains. When Bienke came to the Department, there were seven captains, now there are three captains and three lieutenants. All captains had been formally excluded as being supervisory positions. The three captains no longer act as shift commanders but are now in charge of the divisions of investigations, juvenile investigations, and support services. No lieutenants work in these three areas. There is a job description in the Department manual which lists the job duties of the shift commander/lieutenant. The lieutenants do not report to captains but report directly to the Police Chief.

The lieutenants are the highest ranking patrol officer on each shift. The sergeant is the acting shift commander when the lieutenant is absent. When the lieutenant is present, the sergeants on duty act as the street supervisor and oversee the patrol operation on the street, while the lieutenants act as shift commanders and oversee the operations of the shift.

Neither the lieutenant nor the sergeant are ever "assigned" to a given patrol area, however the lieutenant may fill in for the sergeant, if the sergeant is on break or is detained by some other



matter. While other shift personnel are given specific patrol assignments, Bienke expects each lieutenant to spend at least 50% of his working time in the field. The other 50% of the time is spent in the law center working on scheduling matters and other paperwork which includes updating the current evaluation forms. Their authority and use of direction arises in situations where there are no directives within the current Department manual. Both Bienke and Gertson agree that if there are procedures in the manual, the police officers and the lieutenants are expected to follow those directives.

Patrol officers schedule their own days off within the 28-day work cycle, however the lieutenant does have the authority to oversee when the patrolmen schedule those days off. The lieutenant has the authority to: issue oral reprimands; recommend discipline to the Police Chief; suspend a patrol officer for a short period of time (i.e. send the officer home for the entire or partial shift as disciplinary action); approve leave requests (i.e. sick leave, vacation, funeral, etc.); direct and assign work of the police officers on his shift; direct and assign non-sworn employees (e.g. animal control, PSO); send sick officers home; attend regular management meetings; use independent judgment in emergency situations or in situations which are not controlled by the Department manual. The lieutenant does not receive overtime pay. Other than sending an officer home, with pay, for the remainder of the shift, the lieutenant does not have the authority to discipline the employees on his shift. He does, however, have the authority

to recommend disciplinary action to the Police Chief, and in fact would draft such a recommendation to be presented to the Chief. Testimony indicated that the Police Chief would act upon that recommendation for discipline, without independent investigation, unless the officer requested a hearing. At that point, the Chief would do an independent investigation and an administrative hearing would be commenced. The lieutenant does not have the authority to: suspend an officer without pay; adjust formal grievances at any step; lay off or recall an employee; suspend an employee for an extended time period with pay; change a subordinate's job duties as a form of discipline; determine work schedules; perform evaluations; and hire or fire officers.

There have been no evaluations performed for several years and the evaluation forms which are currently in existence are outdated and unused. Chief Bienke testified as to his "perception" of an efficient evaluation system's operation, however, that perceived system is not currently in effect. Each lieutenant is encouraged by Chief Bienke to keep independent files on each of the officers under his direction. The lieutenant is then expected to make comments concerning commendable actions performed by those officers as well as comments concerning actions which the lieutenant considers to be inefficient or detrimental to the mission of the Police Department.

#### CONCLUSIONS OF LAW

The first issue is whether to amend the existing bargaining unit to include the job classifications of: departmental

secretary, office secretary, front desk clerk & receptionist, record clerk, animal warden and lieutenant.

The City argues that the position of lieutenant is supervisory and that the position of departmental secretary is supervisory and confidential, and that the position of office secretary is confidential. The City further argues that all of the clerical positions (which would include departmental secretary, office secretary, record clerk and front desk clerk & receptionist) would more appropriately be included in a city-wide clerical bargaining unit. It finally argues that CPBU should only represent non-supervisory, sworn officers.

Initially I will discuss the makeup of the appropriate unit, then I will discuss the merits of the arguments posed by the City on the exclusion of certain positions from the bargaining unit.

PERB has consistently held that bargaining unit determinations are made on a case-by-case basis in which the Board applies the §13.2 statutory criterion<sup>3</sup> to the relevant facts of each employment situation. Moreover, application of the criterion to the facts presented in each case does not require the Board to define the most appropriate bargaining unit, rather the Act requires the Board to determine an appropriate bargaining unit.<sup>4</sup>

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<sup>3</sup>Iowa Code §20.13(2) . . . In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendation of the parties involved. . . .

<sup>4</sup>Hamilton County Public Hospital, 91 H.O. 4272.

Efficient administration of government:

The Board has held that the §13.2 criterion require the designation of as few a number of bargaining units as possible, consistent with the requirement that employees be permitted to form organizations of their own choosing to represent them in a meaningful and effective manner.<sup>5</sup> The requirement of limiting the number of units is tempered by the necessity that the unit structure afford meaningful collective bargaining. In this case, CPBU has bargained with the City since 1976, and the fact that the CPBU has now petitioned to amend the disputed positions into the existing bargaining unit clearly indicates that it intends to meaningfully represent those positions.

At hearing and again in the post-hearing brief, the City argues that the clerical positions should more appropriately be placed in a city-wide clerical bargaining unit, one which does not currently exist. An amendment of unit is governed by §20.13(1) of the Act and Rule 4.6(1) and (2) of the Rules of the Board.<sup>6</sup> Under §13.1, Board determination of an appropriate bargaining unit shall be "upon petition filed by a public employer, public employee or public employee organization."

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<sup>5</sup>City of Des Moines, 75 PERB 21, 125 & 126.

<sup>6</sup>Iowa Admin. Code 621-r. 4.6(1) & (2)(1989). Rule 4.6(1) states: Petition. A petition for amendment of a Board determined bargaining unit may be filed by the public employer or the certified employee organization.

Rule 4.6(2) refers to the applicability of the provisions of Rule 4.2 which states in relevant part, 4.2(2) Notice to Parties. . . . Upon the filing of a petition for unit determination, the board shall furnish to the employer a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under the Act. Notices shall be posted by the public employer in conspicuous places customarily used for the posting of notices to employees.

Any question concerning a city-wide clerical unit description is not properly before me at this time. Neither the City nor CPBU have petitioned for a separate bargaining unit comprised of City clerical workers, and it is not within the purview of the amendment filed by CPBU to make a determination pertaining to a city-wide clerical bargaining unit. To determine that a city-wide clerical unit is appropriate would negate the intent of the Board Rules, cited above. Since Board Rules allow an employer to file an amendment of unit petition, the City is not prejudiced by this conclusion.

The grant or denial of the unit amendment in this case would have no effect on the number of bargaining units in the City of Clinton, and therefore would not encourage proliferation of bargaining units. The City currently has four bargaining units. To include the disputed positions in the CPBU, does nothing to that *status quo*. There would still be one certified bargaining unit which represented employees of the City Police Department. The only change would be to reduce the number of city job classifications which remain unrepresented.

Community of Interest:

Consideration of the "community of interest" criteria requires the comparison of the duties, skills, qualifications, method of compensation, benefits, hours of work, common supervision, employee

contact, and employee transfers among the positions to be included in the bargaining unit.<sup>7</sup>

All of the disputed positions are located in, or operate out of the law center and are filled with personnel who work on a daily basis with Clinton Police officers. All have jobs which directly relate to police work and all are city employees who are paid from the police payroll. There is a common interest between the police officers and the employees who fill these positions in the terms of their relationship with the City and the mission of the Police Department. All the employees except the departmental secretary and office secretary, have some contact with the public. The general benefits received by those holding these disputed positions are the same or similar to those benefits currently received by positions which are currently included in the bargaining unit (i.e. holiday pay, vacation pay, sick leave, funeral leave, overtime pay). There is more than occasional interchange between those employees holding the disputed positions and persons whose positions are currently included in the bargaining unit. There is common supervision in that the Police Chief has direct control over any of the employees within the current bargaining unit and also any employee who holds a position which is proposed to be amended into the bargaining unit.

However certain dissimilarities are also present: the duties and skills of the police officers is much more detailed than that

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<sup>7</sup>Des Moines Independent Community School District, 84 PERB 2498, AEA 7, 82 H.O. 2131, Dubuque CSD, 88 H.O. 1204 & 1678.

of the non-sworn employees. There was no evidence presented that any of the disputed positions have, in fact, any type of promotional ladder or any type of system for promotion. The entry level qualifications appear, from the Department manual, to be substantially more advanced for the positions of police officers than for the non-sworn positions.

Nevertheless, testimony indicated that the basic role of assisting the public is shared by both the police officers who currently comprise the CPBU and those non-sworn employees who have now been petitioned for. Both groups work in close proximity with one another, within the law center. The Board has previously stated that ". . . it is well settled that community of interest requires similar, not identical job factors and other conditions of employment."<sup>8</sup> In this case there appears to be a sufficient community of interest for the inclusion of the disputed positions into the current unit.

#### History and Extent of Public Employee Organization:

The CPBU has been bargaining for the sworn police officers for the City of Clinton since 1976. CPBU Spokesman testified that, while it would be a break in tradition for CPBU to represent non-sworn personnel, the Union believed that it would be able to adequately represent the petitioned-for employees. The CPBU would be in a position to adequately negotiate for similar benefits for those employees holding the disputed positions. No evidence was

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<sup>8</sup>Des Moines Independent School District, 84 PERB 2498; Mid-Prairie CSD, 85 PERB 2595.

presented by the City which would lead me to believe that the CPBU, while historically representing only sworn officers, would be unable to adequately represent non-sworn employees.

Geographical Location:

As indicated, all of the employees work in or out of the law center. This single cite supports a conclusion that the petitioned-for amendment is appropriate.

Recommendation of Parties:

The recommendations of the parties are divergent. The Association argues that the issue is whether its amended unit constitutes an appropriate bargaining unit pursuant to §13.2, and further, whether any statutory exclusions may be imposed. The City, however, argues that the amended unit is inherently inappropriate since CPBU has traditionally only represented sworn officers. There is no statutory prohibition against the CPBU representing those job classifications for which it has petitioned. No authority was presented by the City for such an argument nor can I find any authority which would allow preclusion of the amended classifications based on the narrow argument that it was contrary to prior bargaining history.

I conclude therefore that, without statutory exclusions,<sup>9</sup> the

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<sup>9</sup> Section 20.4 of the Act identifies those employees to be excluded from the Act and provides in part: The following public employees shall be excluded from the provisions of this chapter:

2. . . . Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, and any supervisory employee.

Supervisory employee means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their



positions of: departmental secretary; secretary; front desk clerk & receptionist; record clerk; part-time and full-time animal control wardens; PSO; and lieutenant, may be appropriately amended into the existing Clinton Police Department Bargaining Unit.

EXCLUSIONS:

The next issue is whether the positions of lieutenant and departmental secretary are supervisory, and whether the position of departmental secretary and office secretary are excluded as being confidential employees.

The Iowa Supreme Court and PERB caselaw has given considerable guidance as to the construction of the term "supervisory employee".<sup>10</sup> In the City of Davenport, the Court indicated that the issue of supervisory status is a fact question involving "a case-by-case approach".<sup>11</sup> The Court also held that the supervisory

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(Footnote 9, cont'd)

grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not merely routine or of a clerical nature, but requires the use of the independent judgement. . . .

3. Confidential employees.

Confidential employee is defined in 20.3(7) of the Act as:

"Confidential employee" means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

"Confidential employee" also includes the personal secretary of any of the following: Any elected official or person appointed to fill a vacancy in an elected office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division thereof, or the deputy or first assistant of any of the foregoing.

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<sup>10</sup>City of Davenport v. PERB, 264 N.W.2d 307 (Iowa, 1978), Des Moines County, 1988 PERB 3493 & 3502; City of Pella, 88 PERB 3620.

<sup>11</sup>Davenport at 313.

functions enumerated in Section 20.4(2) of the Act were written disjunctively;

possession of any one of them is sufficient to make an employee a supervisor. The power must exist in reality, not only on paper. However, it is the existence of the power and not its exercise which is determinative. What the statute requires is evidence of actual supervisory authority "visibly translated into tangible examples..."[citations omitted]

In addition, "the statute expressly insists that a supervisor (1) have the authority (2) to use independent judgment (3) in performing such supervisory functions (4) in the interest of management. These latter requirements are conjunctive." [citations omitted]...Authority to perform one of the enumerated functions is not supervisory if the responsibility is routine or clerical. [citations omitted]

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Repetitive or rote tasks are not considered supervisory. [citations omitted] Nor are functions requiring little more than use of common sense. [citations omitted]

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An individual who merely serves as a conduit for orders emanating from superiors acts routinely. The title a position carries has little bearing on whether it is supervisory. It is the function rather than the label which is significant. [citations omitted]<sup>12</sup>

Temporary or occasional service as a supervisor is not disqualifying. . . Temporary service as a supervisor does not make a rank-and-file employee a supervisor.<sup>13</sup>

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<sup>12</sup>Id. at 314.

<sup>13</sup>Id. at 315.

**Lieutenant:**

The very nature of the service performed by a police department demands that someone must be "in charge" all of the time. The record is replete with examples which indicate that the lieutenant is in fact a supervisory position and is treated as such by the Police Chief. While the Police Chief remains the central figure of authority within the Police Department, the lieutenants are the arms and legs of management and exert supervisory authority in the following manner: attend regular management meetings; make recommendations for disciplinary action which are not independently investigated by the Police Chief as a matter of course; and they may suspend a subordinate officer with pay as well as send a sick officer home for the rest of the shift. Lieutenants assist in the updating of the evaluation forms and, further, they keep independent files on each of the officers under their direction, for the purpose of commendation or disciplinary action to be taken by the Chief.

I conclude that there is sufficient evidence in the record to indicate that those in the position of lieutenant in the Clinton Police Department are supervisory personnel.

**Department secretary:**

Both the Iowa Supreme Court and PERB have also recognized the term "leadman" or "straw boss".<sup>14</sup> In City of Ames, the hearing officer stated that the term "leadman":

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<sup>14</sup>City of Davenport v. PERB, 264 N.W.2d 307, 322 (Iowa 1978); Des Moines County, 88 PERB 3493 & 3502; City of Pella, 88 PERB 3620.

. . . by definition suggests some responsibility beyond that of the rank-and-file employee, it is customarily applied to an individual who directs the work of a small group of employees, while at the same time performing the same work as those employees. Leadman status is often conferred upon the most experienced employee on the job. The critical element is whether their direction of the work is routine in nature and does not call for frequent exercise of independent judgment or managerial discretion.<sup>15</sup>

From the record it is clear that the departmental secretary does in fact oversee several other employees. However, most of her time is spent performing routine duties. Chief Bienke testified that the duties of the departmental secretary and those of the office secretary were in fact indistinguishable. Other than the routine assignment or direction of work, the only indicia of supervisory status was one instance where the departmental secretary sent an employee home whom she believed to be unable to perform her job duties. From the record, it is clear that the departmental secretary is in fact a leadworker and a non-supervisory position.

When reviewing the exclusion for confidential employees of §20.3(7),<sup>16</sup> and comparing to the record as presented, there is no evidence which indicates that the departmental secretary has access to information subject to use by the public employer in negotiating or that she works in a close continuing working relationship with public officers or representatives associated with negotiating on

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<sup>15</sup>City of Ames, 75 H.O. 15 at p.3; See also, City of Perry, 90 H.O. 3888; City of Belle Plaine, 90 H.O. 4081.

<sup>16</sup>See supra FN 9.

behalf of the public employer. Other than one statement by Chief Bienke that he considers the departmental secretary "akin to" a confidential secretary, no evidence was presented as to the confidential nature of her work duties.

However, the statutory exclusion also includes "the personal secretary of the following: . . . chief executive officer of a public employer or major division thereof, . . ." The Clinton Police Department is a major division of the City of Clinton. It follows, therefore, that Chief Bienke is the chief executive officer of that major division. While the duties of the departmental secretary, with regards to Chief Bienke, appear to be those of making travel arrangements and reservations, I conclude that she is, in fact, the personal secretary of the chief executive officer of a major governmental division and is therefore *per se* a confidential employee and excluded from the CPBU.

**Secretary:**

I have previously concluded that the departmental secretary is not a supervisory employee, nor can I find now that the office secretary is a supervisory employee. The office secretary performs all of the duties of the departmental secretary when the departmental secretary is absent. However, the sporadic "filling in" for the departmental secretary is insufficient upon which to exclude the position of office secretary from the bargaining unit as either a supervisor or a confidential employee. No evidence was presented that this secretary has any access to personnel records or the personnel office of the public employer, or that she in fact

has access to information subject to use by the public employer in negotiating. She is not considered by the Chief to be "akin to" a confidential secretary nor is she his personal secretary. I conclude from the evidence in the record that the position of office secretary is neither a supervisory position nor is it a confidential position as contemplated by the Act.

The final issue is whether an election is now required. PERB Rule 4.6(3) governs when an election is required when a petition for an amendment of unit has been filed.

A question of representation exists, and the board will conduct a representation election, if the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

From the evidence presented, a question is raised as to whether an election must be held so as to allow certain positions an opportunity to vote. According to the evidence submitted, the animal warden, secretary and record clerk positions were in existence in 1976 when the CPBU was organized. I conclude however, that none of these job classifications would separately constitute an appropriate bargaining unit, therefore an election is not required by PERB Rules.

I conclude that, without a statutory basis for exclusion, the following positions are appropriately included into the existing bargaining unit: lieutenant; departmental secretary; secretary; front desk clerk & receptionist; record clerk; part-time and full-time animal control wardens; and public service officer. I further

conclude, however, that the position of lieutenant is a supervisory position and therefore excluded, and that the position of departmental secretary is a confidential employee and consequently excluded under the Act.

Based upon the above Findings of Fact and Conclusions of Law, I issue the following:

RECOMMENDED ORDER

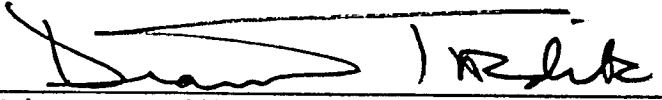
IT IS HEREBY ORDERED that the bargaining unit previously determined in Case #560, and the certification of the Clinton Police Department Bargaining Unit is amended to read as follows:

**INCLUDED:** Patrolmen, Corporals, Sergeants, Record Clerk, Office Secretary, full and part-time Animal Control Warden, Public Service Officer and full & part-time Front Desk Clerk & Receptionist.

**EXCLUDED:** Chief of Police, Captains, Lieutenants, Departmental Secretary and all others excluded by Section 4 of the Act.

DATED at Des Moines, Iowa this 17<sup>th</sup> day of June, 1991.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
Diane Tvrdik,  
Administrative Law Judge